REMARKS

Claims 1-23 were pending in this application.

Claims 1, 2, 4, 5, 10, 16, and 21-23 have been rejected.

Claims 3, 6-9, 11-15, and 17-20 have been objected to.

Claims 2, 3, 6-9, 12-15, and 18-20 have been amended as shown above.

Claims 1-23 remain pending in this application.

Reconsideration and full allowance of Claims 1-23 are respectfully requested.

I. ALLOWABLE CLAIMS

The Applicant thanks the Examiner for the indication that Claims 3, 6-9, 11-15, and 17-20 would be allowable if rewritten in independent form to incorporate the elements of their respective base claims and any intervening claims. Because the Applicant believes that the remaining claims in this application are allowable, the Applicant has not rewritten Claims 3, 6-9, 11-15, and 17-20 in independent form.

II. REJECTION UNDER 35 U.S.C. § 103

The Office Action rejects Claims 1, 2, 4, 5, 10, 16, and 21-23 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,486,843 to Otting et al. ("*Otting*"). This rejection is respectfully traversed.

In *ex parte* examination of patent applications, the Patent Office bears the burden of

establishing a *prima facie* case of obviousness. (*MPEP § 2142; In re Fritch, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992)*). The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention is always upon the Patent Office. (*MPEP § 2142; In re Oetiker, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); In re Piasecki, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984)*). Only when a *prima facie* case of obviousness is established does the burden shift to the Applicant to produce evidence of nonobviousness. (*MPEP § 2142; In re Oetiker, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); In re Rijckaert, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993)*). If the Patent Office does not produce a *prima facie* case of unpatentability, then without more the Applicant is entitled to grant of a patent. (*In re Oetiker, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); In re Grabiak, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985)*).

A *prima facie* case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. (*In re Bell, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993)*). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on the

Applicant's disclosure. (*MPEP § 2142*).

Otting recites a signal level indicator that displays the "magnitude" of an input signal. (*Abstract*). The signal level indicator includes multiple LEDs. (*Abstract*). The LEDs strobe during a display period, and the number of LEDs illuminated during the display period varies based on the magnitude of the input signal. (*Col. 2, Lines 30-34*). For example, the number of LEDs illuminated could be determined by dividing a "realistic range of digitizing values" by the number of LEDs to identify thresholds for the LEDs and illuminating each LED whose threshold is exceeded. (*Col. 4, Lines 20-40*). The LEDs to be illuminated are illuminated for a length of time needed to fill a "display period." (*Col. 2, Lines 34-38*). For example, the length of illuminating each LED could be determined by dividing the display period (such as 0.5 seconds) by the number of LEDs to be illuminated. (*Col. 4, Lines 41-59*). The input signal could represent control channel signals from a base station received by a cellular telephone, and the magnitude of the input signal could represent the strength of the control channel signals. (*Col. 2, Lines 58-61*).

Otting simply recites a device that uses LEDs to display the magnitude or strength of an input signal. *Otting* recites absolutely nothing about computing "adjustments" to a "parameter" of signals being processed. *Otting* also recites absolutely nothing about the "adjustments" being based on a "preferred parameter level for the parameter" and "at least one of: a current ambient factor and a property" of the signals. In addition, the single signal level indicator of *Otting* is never used as an indicator that is indicative of or that identifies "computed adjustments" to the "parameter" or as an indicator that is indicative of or that identifies the "preferred parameter level." At most, *Otting*

discloses the use of a single indicator, but the indicator recited in *Otting* does not disclose, teach, or suggest the "indicators" or "indicator means" recited in Claims 1, 5, and 23. As a result, *Otting* fails to disclose, teach, or suggest all elements recited in Claims 1, 5, and 23.

Moreover, Claims 1, 5, and 23 recite numerous elements apart from the "indicators" or "indicator means." The Office Action does not even attempt to establish that *Otting* discloses, teaches, or suggests all elements of Claims 1, 5, and 23. For example, the Office Action never attempts to explain how *Otting* discloses, teaches, or suggests controlling a "parameter" of signals by computing "adjustments" to the parameter "as a function of both (i) a preferred parameter level for the parameter and (ii) at least one of: a current ambient factor and a property" of the signals. These elements are recited in Claims 1, 5, and 23, but the Office Action does not establish that *Otting* discloses, teaches, or suggests these elements of the claims.

For these reasons, the Office Action fails to establish a *prima facie* case of obviousness against Claims 1, 5, and 23 (and their dependent claims). Accordingly, the Applicant respectfully requests withdrawal of the § 103 rejection and full allowance of Claims 1, 2, 4, 5, 10, 16, and 21-23.

III. CONCLUSION

The Applicant respectfully asserts that all pending claims in this application are in condition for allowance and respectfully requests full allowance of the claims.

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PATENT

SUMMARY

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *wmunck@davismunck.com*.

The Commissioner is hereby authorized to charge any fees connected with this communication (including any extension of time fees) or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

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Date: Oct. 17, 2005

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